

No. 3774

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

GONG SIC OR,

Appellant,

VS.

EDWARD WHITE, as Commissioner of Immigration,
Port of San Francisco,

Appellee.

BRIEF FOR APPELLANT.

JOSEPH P. FALLON,
Attorney for Appellant.

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STATEMENT OF FACTS.

This is an appeal from the judgment of the United States District Court for the Southern Division of the Northern District of California, First Division, made and entered on the 27th day of June, 1921, sustaining the demurrer interposed to appellant's petition for a writ of habeas corpus.

Gong Sic Or is a Chinese person who arrived at the port of San Francisco on the 26th day of November, 1920, and made application to enter the United States as the foreign born son of Gong Bing Gow, a native born citizen of the United States.

He was denied admission after a hearing before a Board of Special Inquiry from whose decision an appeal was taken to the Secretary of Labor at Washington, D. C., where the decision of said Board was affirmed and Gong Sic Or ordered deported (page 46).

The citizenship of the father, Gong Bing Gow, is not questioned but the appellant is denied admission solely upon the ground that the relationship of father and son has not been established to the satisfaction of the Immigration Officials (page 43).

UNFAIRNESS OF HEARING.

It is our contention that the hearing accorded the appellant was unfair in that the Secretary of Labor, after sweeping aside as immaterial and inconsequential all the alleged discrepancies pointed out by the Board of Special Inquiry and affirmed by said Board of Special Inquiry as sufficiently material upon which to base a denial of relationship, proceeded to deny the appellant's right to enter upon the ground that the appellant knew nothing of an epidemic that the father stated had occurred in the home village and which resulted in the deaths of many persons.

The decision of the Secretary of Labor is found on page 46 of the record and reads as follows:

“After oral hearing the dismissal of appeal ordered above is affirmed. The discrepancy re-

garding the epidemic and deaths appears to me conclusive.

March 3, 1921.

(Sgd.)

LOUIS F. POST,
Assistant Secretary."

If this point was so important, the matter should have been given more attention by the Board of Special Inquiry. In its examination on this point (page 16) held on the 27th day of December, 1921, the father was questioned as follows:

"Q. Were there any deaths in your village when you were last there?

A. Yes, many deaths that year.

Q. Name some of the Chinese who died whom your son would be apt to know about?

A. Gong Sue Meng and many other young people whose names I do not know.

Q. What was the cause of many deaths?

A. Epidemic."

At the examination of the appellant held on the 28th day of December, 1920, the appellant was examined as follows:

"Q. Has any member of your family been seriously sick?

A. No.

Q. Have there been many deaths in your village during recent years?

A. No.

Q. Do you know of any persons in your village who have died during the present year?

A. No."

It is manifestly unfair, if the point were so important, to have omitted asking the appellant if a man by the name of Gong Sue Meng had died. The

father was asked to name some person whom the son would be apt to know about (page 16). To omit asking him that question and to fail to elaborate upon the point in order to ascertain that fact was decidedly unfair to the appellant. We respectfully request that the order of the District Court denying the issuance of a writ of habeas corpus be reversed and that the writ of habeas corpus issue as prayed for.

Dated, San Francisco,
October 22, 1921.

JOSEPH P. FALLON,
Attorney for Appellant.